

## KELLEY PARK FIELD JOINT USE AGREEMENT

This Joint Use Agreement ("**Agreement**"), is made and entered this 1<sup>st</sup> day of March, 2021 ("**Effective Date**"), by and between The Board of Education of Montgomery County, a body corporate and politic of the State of Maryland (the "**Board**"), and The City of Gaithersburg, Maryland, a municipal corporation of the State of Maryland (the "**City**") both of which are hereinafter referred to jointly as the ("**Parties**") and sometimes individually as the ("**Party**"),

### RECITALS

WHEREAS, the City owns the Kelley Park Turf Field, located at 400 Victory Farm Drive, Gaithersburg, Maryland 20877 (the "**Field**"), and the Board wishes to use the Field, as delineated below; and

WHEREAS, the City is obligated to construct the Field pursuant to the Land Acquisition Agreement entered into between the Parties on June 2, 2020 ("**Land Acquisition Agreement**"); and

WHEREAS, pursuant to the Land Acquisition Agreement, the City has elected to construct the Field as a synthetic, artificial turf field; and

WHEREAS, it is the desire of both the Board and the City to clarify and set forth in this Agreement their respective rights and obligations with respect to the use, maintenance and replacement of the Field once construction is completed pursuant to the obligations in the Land Acquisition Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the mutual benefits and promises herein made, the Parties hereby agree as follows:

1. The recitals set forth herein are incorporated by reference as if fully set forth herein.
2. On each and every school day, the Board shall have exclusive use of the Field from 8:00 a.m. to 5:00 p.m. (collectively, the "**Board Exclusive Use Hours**"). The City shall have use of the Field between the hours of 5:00 p.m. to 9:45 p.m. Monday through Friday, and 8:00

a.m. to 9:45 p.m. on weekends, as well as during the academic year on days when school is not in session (collectively, the “City Exclusive Use Hours”).

3. If the Board reasonably determines that it needs use of the Field during times outside of the Board Exclusive Use Hours, it shall request such additional use from the City, coordinated through the Director of Parks, Recreation and Culture, which such request shall be granted or withheld in the City’s sole and absolute discretion.
4. If the City reasonably and occasionally determines that it needs use of the Field outside of the City Exclusive Use Hours, it shall request such additional use from the Board, coordinated through the principal of the School (defined below), which such request shall be granted or withheld in the Board’s sole and absolute discretion.
5. The City agrees to assume the following responsibilities:
  - a. Field maintenance:
    - i. The City is responsible, at the City’s sole expense, for all repairs and maintenance of the Field, including fencing, except as otherwise specifically provided herein.
    - ii. The City shall consult with staff of Montgomery County Public Schools (“MCPS”) designated by the Board regarding the type and schedule of normal field maintenance, taking into account the needs of both the City and the Board and the weather. The City agrees to inform Gaithersburg Elementary School #8 (the “School”) of any maintenance that would interfere with the School’s use of the Field.
    - iii. The City shall ensure that the field meets ASTM standards upon completion of construction and shall test the field bi-annually for compliance with G-Max standards of no more than a 200 G-Max rating for synthetic, artificial turf field and shall provide the Board with the testing results within five (5) business days after the City’s receipt thereof. In the event the Field does not meet G-Max standards, the City shall with reasonable promptness undertake repairs and maintenance of the Field to obtain compliance.
    - iv. Field maintenance shall be conducted with reasonable advanced notice given to the School. A reasonable attempt shall be made to minimize the

interruption to the academic community during the daily maintenance and emergency repairs.

- b. During any time when the City has the right to the use of the Field, whether by virtue of the terms of this Agreement or by virtue of separate subsequent agreement between the Parties, the City shall be fully responsible for all authorized persons using the Field, and shall use its best efforts to provide appropriate supervisory personnel and operate the Field in accordance with the guidelines established by the City.
- c. The City has the authority to remove the Field from service if conditions require extensive repair and shall reasonably determine when the Field returns to the active inventory.
- d. The City will dictate a refurbishment schedule to remove the Field from service for reconditioning.

6. The Board agrees to the following responsibilities:

- a. The Board will not mark or paint the Field without approval from City, such approval not to be unreasonably withheld, conditioned or delayed.
- b. The Board will notify the City regarding maintenance issues that render the Field unplayable or create a safety concern.
- c. The Board will be responsible for all litter and general clean up associated with the use of the Field during the academic year during the Board Exclusive Use Hours.
- d. Regarding field safety for school use, the Board shall report any maintenance and/or safety issues to the City promptly after discovery thereof and shall postpone all field use until the City inspects the safety issues reported and makes a determination as to the appropriate measures to be taken by the City. Subsequently, the Board shall not use the Field, in whole or in part, if it is

determined to be unsafe until the City has corrected the problem. Upon the Board reporting any such issues, the City shall promptly inspect the issues reported and thereafter correct the problem(s) within a reasonable time period.

- e. The Board shall ensure that all usage of the Field during its programming periods shall comply with installation warranty requirements and operation and maintenance manuals (i.e. overuse or excessive occupancy of the Field).
- f. Should the Board use the Field in a manner that conflicts with the warranty or operation/maintenance manuals they shall be responsible for associated repair costs resulting from the Board's misuse of the Field.
- g. The Board shall designate one (1) staff member who will work with the City regarding Field scheduling.
- h. The Board shall be responsible for adherence to all City policies and procedures as posted during use of the Field.
- i. The Board has the authority to exercise control over the use of the Field during the Board Exclusive Use Hours.
- j. During any time when the Board has the right to use the Field, whether by virtue of this Agreement or by virtue of a separate subsequent agreement between the Parties, the Board shall be fully responsible for all authorized persons using the Field, shall provide appropriate supervisory personnel, and shall operate the Field in accordance with the specifications and curriculum outlined by the Board and the City's policies and procedures.
- k. During any time when the Board has the right to use the Field, such use shall be limited to a reasonable number of participants, including students, staff and others, at any given time, mutually agreed to by the Board and the City upon completion of the design of the Field.

7. The following stipulations will apply to this Agreement:

- a. For the purpose of this Agreement, the “school day” is defined as any day during a regular school year when regular instruction is offered on site to the students of the School. It shall not include summer sessions, nor any day when the school is closed because of snow or other weather conditions, or any day on which the school is only open for the purpose of teachers' meetings or other activities when the students are not expected to be in attendance.
- b. The Parties hereby acknowledge that program opportunities may suggest adjustment to this allocation of hours of use from time to time, and either Party may, by separate written agreement between the parties, use the Field on different days and times than those specified in this Agreement.
- c. The Field will be excluded from the MCPS/ICB field inventory list.
- d. The Principal of the School or his/her designee as well as City staff will consult from time to time with reference to matters of mutual concern.
- e. Nothing in this Agreement is intended to prohibit the Board and the City from cooperatively purchasing or providing materials and equipment for the maintenance of the Field (provided, however, the foregoing shall not obligate the Board to pay for any maintenance or equipment except as otherwise specifically required by Section 6 above).
- f. All equipment required for the operation and maintenance of the Field for City programs will be provided by and paid for by the City. The Board will be responsible for providing all equipment and materials associated with Montgomery County Public Schools educational and athletic programs and curriculum. If other pieces of equipment are required, a separate agreement will be enacted regarding the acquisition and maintenance of such equipment.
- g. The cost of all utilities necessary to operate the Field at any time, including, but not limited to, electric and water, will be shared by the Board and the City based on use.

The City will invoice the Board for its share of the utility costs at the end of each calendar year. The invoice shall include reasonable evidence of the costs incurred and the calculation for apportioning each Party's use. Provided the Board has no reasonable objection to the invoice and supporting documentation, payment is due upon 30 days of received invoice. If the Board disagrees with the invoice, the Parties shall meet promptly to attempt to resolve the dispute.

- h. In general, instructional and competitive equipment belonging to either Party will be shared equally. All equipment must meet the reasonable approval of the City.
- i. The City will be entitled to charge field use fees as it deems appropriate per the City's annual adopted Fee Schedule for all uses of the Field during any time when the City shall have the right to use the Field. The City will be entitled to retain all such fees.
- j. Subject to, and in accordance with Sections 3 and 4 above, the City has the sole authority to schedule use of the Field during non-Board Exclusive Use Hours. However, if the Board wishes to use the Field during hours outside of the Board Exclusive Use Hours or if the City wishes to use the Field during hours outside the City Exclusive Use Hours, the Board and the City will work together to make changes to the schedule in order to grant the other Party potential additional use of the Field during times outside of their Exclusive Use Hours. The Parties shall meet from time to time as may be reasonably necessary to discuss such changes to the schedule.
- k. In the case of inclement weather, both Parties will refrain from using the Field so as to minimize damage.

## **8. Insurance**

The City and Board will provide comprehensive insurance coverage for their mutually exclusive programs, and will provide a current certificate of insurance to the other Party upon request. Both the City and the Board will maintain Worker's Compensation Coverage for their respective employees. To the extent permitted by law and subject to

appropriations from both Party's funding authorities, it is the intent of this Agreement that the Board will be responsible for insurance to cover all school related programs, and the City will be responsible for insurance to cover all City related programs.

9. **Indemnification.** To the extent permitted by law and subject to appropriations from the Board's funding authorities, the Board shall indemnify and hold harmless the City, its servants or agents, or its users of the Field, from any claim of liability or loss from personal injury or property damage resulting from or arising out of the use of the Field by the Board, its servants or agents, or its users of the Field, during the Board Exclusive Use Hours and any other times that the Board is permitted to use the Field. To the extent permitted by law and subject to appropriations from the City's budget, the City shall indemnify and hold harmless the Board, its servants or agents, or its users of the Field, from any claim of liability or loss from personal injury or property damage resulting from or arising out of the use and occupancy of the Field by the City, its servants or agents, or its users of the Field, during the City Exclusive Use Hours and any other times that the City is permitted to use the Field.
10. To the extent permitted by law and subject to appropriations from the Board's funding authorities, the Board assumes all liability associated with use of the Field by the School. With respect to any other non-City group that is given access to the Field by the Board during academic and after school periods of usage (an "**Other Group**"), the Board shall require, as a condition of the Other Group's access to the Field, that the other Group execute a written indemnification agreement in favor of the City for loss or damage arising out of such access. If such an indemnification agreement is not provided by the Other Group, then the Board shall assume all liability associated with the use of the Field by the Other Group.
11. Nothing herein or any other provision of this Agreement shall be construed to abrogate, impair, or waive any defense, liability or damages limitation, or governmental immunity of the either Party pursuant to Maryland law, or otherwise. For the purposes of this provision, the Board includes the Board's officers, officials, agents, and employees and the City includes the City's elected officials, appointed officials, agents and employees.
12. Guidelines for shared use of the Field may be reviewed regularly, but can only be amended if agreed upon in writing by both the City and the Board. In no instances may



the guidelines initiate any change in the City's leadership of scheduling responsibilities or ownership of the Field.

**13.** The Parties agree that, so long as this Agreement remains in full force and effect, at the end of the useful life of the Field, the Board shall share the cost of one (1) replacement field, with the Board's share not to exceed 25% of the total replacement cost. All additional costs associated with this first field replacement, and all costs of any future field replacement after this first field replacement, shall be at the City's sole expense. The Board shall pay its share of such field replacement costs at such time as the replacement field has been completed and opened for use. The plans and specifications for the replacement field will be subject to the Board's reasonable approval, which shall not be unreasonably withheld, conditioned or delayed.

**14. Term**

This Agreement shall be in effect from the Effective Date until the later of (i) ten (10) years after the Effective Date, or (ii) the end of the useful life of the Field (the "Term"); provided, however, at such time as the City makes the determination to replace the Field pursuant to Section 13 above, the Term shall be automatically extended to the later of (x) the date that is ten (10) years after the replacement field is opened for use, or (y) the end of the useful life of the replacement field.. At the time the City decides to replace the Field as described above, the Parties shall meet to discuss any commercially reasonable amendments to this Agreement that the Parties may consider appropriate. Any such agreed upon amendments shall be memorialized in writing prior to the replacement field opening for use.

**15.** The Parties shall comply with all applicable federal, state, and local laws and regulations while using the Field.

**16.** This Agreement may only be amended in writing by the Parties, shall be constructed under the laws of the State of Maryland, and shall bind the Parties, their successors and assigns. Neither Party may subcontract, assign, or transfer responsibilities undertaken in this Agreement to another person or entity, without the express, written consent of the other Party.



**17.** The provisions of this Agreement are for the sole purpose of setting forth the respective rights and obligations of the Parties hereto. None of the provisions of this Agreement are intended for the benefit of any third party, and no such third party shall have the right to enforce the provisions of this Agreement. Nothing contained in this Agreement shall be construed to imply a joint venture, partnership, or principal-agent relationship between the Parties, and no Party shall, by virtue of this Agreement, have any right, power, or authority to act or create any obligation, expressed or implied, on behalf of the other Party.

**18. Headings**

Any and all of the headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of anything in this Agreement.

**19. No Waiver**

Except as otherwise specifically provided in this Agreement, a waiver by either Party of any breach of any provision of this Agreement, or either Party's decision not to invoke or enforce any right under this Agreement, shall not be deemed a waiver of any right or subsequent breach, and all provisions of this Agreement shall remain in force.

**20. Notices**

Any notice provided for or concerning this Agreement shall be in writing and be deemed sufficiently given when sent by certified or registered mail, sent to the respective address of each Party or an authorized representative of each Party as indicated below:

For the City:

Director of Parks, Recreation and Culture Activity  
Center  
506 South Frederick Avenue  
Gaithersburg, Maryland 20877-2325

For the Board:

Board of Education of Montgomery County  
45 W. Gude Drive, Suite 4300  
Rockville, Maryland 20850  
Attn: Department of Facilities Management

With copies to:

Board of Education of Montgomery County  
850 Hungerford Drive, Room 156  
Rockville, Maryland 20850  
Attn: Office of the General Counsel


**21. Effect of Partial Invalidity**

The invalidity of any portion of this Agreement will not, and shall not, be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the Parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both Parties subsequent to the expungement of the invalid provision.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the Parties has caused this agreement to be executed by its duly authorized representative as of the effective date set forth above.

For the City of Gaithersburg:

  
\_\_\_\_\_  
Tanisha Briley  
City Manager

March 1, 2021  
\_\_\_\_\_  
Date

For The Board of Education of Montgomery County:

\_\_\_\_\_  
Name: Brenda Wolff  
Title: President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name: Jack R. Smith, Ph.D.  
Title: Superintendent of Schools

\_\_\_\_\_  
Date


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For the City of Gaithersburg:

\_\_\_\_\_  
Tanisha Briley  
City Manager

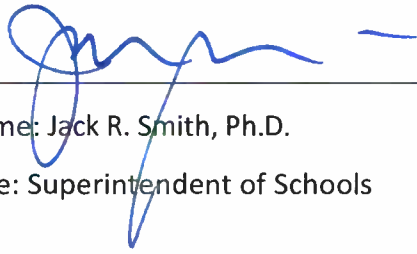
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For The Board of Education of Montgomery County:

  
\_\_\_\_\_  
Name: Brenda Wolff

  
\_\_\_\_\_  
Date

Title: President

  
\_\_\_\_\_  
Name: Jack R. Smith, Ph.D.  
Title: Superintendent of Schools

  
\_\_\_\_\_  
Date